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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,205	06/24/2003	Mohammed Ali Hajianpour	1354	2229

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EXAMINER

PHILOGENE, PEDRO

ART UNIT PAPER NUMBER

3733

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 5-11, 13-22 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,585,736 in view of Benoist. (5,779,703).

With respect to claims 5-11,13-22, it is noted that '736, teaches all the limitations, except for a frame having an arcuate inner surface and a first plurality of holes extending radially from a center of the arcuate inner surface; as claimed by applicant. However, in similar art, Benoist evidences the use of frame having an arcuate inner surface and a plurality of holes extending radially from the center of the arcuate inner surface to hold the bone fragment together while mending.

Therefore, given the teaching of Benoist, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a

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arcuate inner surface in the frame of patent '736 to hold the fragment together while mending.

Response to Amendment

Applicant's arguments, see Remark, filed 11/25/05, with respect to the rejection(s) of claim(s) 1-19 under 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Benoist. See rejection above.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene
February 13, 2006



PEDRO PHILOGENE
PRIMARY EXAMINER